

**ORIGINAL**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

EPIC GAMES, INC.,	)	Further Case Management
	)	Conference
Plaintiff,	)	
	)	
vs.	)	NO. C 20-05640 YGR
	)	
APPLE, INC.,	)	Pages 1 - 25
	)	
Defendant.	)	Oakland, California
	)	Tuesday, January 14, 2025

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**REPORTER'S TRANSCRIPT OF ZOOM WEBINAR PROCEEDINGS**

**APPEARANCES VIA ZOOM WEBINAR:**

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New York, New York 10019  
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(Appearances continued next page)

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A P P E A R A N C E S (CONT'D.)

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--909--

Tuesday, January 14, 2025

10:59 a.m.

## PROCEDINGS

(Zoom Webinar)

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**THE CLERK:** Your Honor, now calling the civil matter  
20-CV-5640-YGR Epic Games, Inc., versus Apple, Inc.

Parties please state your appearances for the record starting with the plaintiff.

**MR. BORNSTEIN:** Good morning, Your Honor. Gary Bornstein for Epic Games.

**MR. EVEN:** Good morning, Your Honor. Yonatan Even for Epic.

**MR. PERRY:** Good morning, Your Honor. Mark Perry for Apple.

**MR. LO:** Good morning, Your Honor. Jason Lo also for Apple.

**THE COURT:** To the extent any of your teams are in Southern California, we send our best wishes. Things are pretty tragic down there.

Okay. And I -- you know, least one of the special masters is from down there as well, so I don't know how that's impacted anything.

It looks like from some of the filings you're a little bit behind schedule. Apple's added more resources

1           But why don't you go ahead and give me the update.

2           We'll start with plaintiffs.

3           **MR. EVEN:** Thank you, Your Honor.

4           So I think we are behind. We started later than we would  
5           have liked. We had a bit of a unfortunate necessity to  
6           withdraw by one of the special masters, as Your Honor is  
7           aware.

8           We do have one of the panel who is evacuated for -- from  
9           her home, and so that, obviously, is -- is an issue as well.

10           In terms of where we are on the numbers, that -- that I  
11           think is where the rubber meets the road right now and where  
12           the -- the real issue. So Apple has been rereviewing --  
13           they've been slower than they were obligated to be or  
14           committed to being, but they say that they were going to  
15           finish by Friday.

16           They have taken down or downgraded quite an astounding  
17           number of original privilege calls. And so yesterday at  
18           least, they took the position that they believe that 17,000  
19           documents are going to remain for review for the special  
20           masters.

21           That means with -- by my math that 38,000 are going to be  
22           downgraded. So about 69 or 70 percent of the documents are  
23           just not privileged even by Apple's own rereview.

24           The special masters have been downgrading about 10 percent  
25           of what they're seeing. And so that's a little bit more.

1           Even with these astounding numbers of downgrades, 17,000  
2           is just something that the special masters have made very  
3           clear to us last night is going to take them a long time to  
4           review. They believe that they're at a clip or will be at a  
5           clip of about a thousand a week. And so that's kind of where  
6           we are right now.

7           **THE COURT:** A thousand a week collectively?

8           **MR. EVEN:** Correct. Collectively, not per -- and so  
9           that is really where the -- the slowness in this comes from.  
10           There's -- they can only do so much, which we fully  
11           understand.

12           But the bottom line is, as -- as we told Your Honor from  
13           the get-go, we -- we suspected that Apple has been engaged in  
14           a campaign here of overwithholding. I think the numbers speak  
15           for themselves on that. It's pretty clear that they have  
16           been.

17           And we also said all along that Apple is playing this  
18           because it's a win/win situation for them, and they are  
19           unfortunately winning on that.

20           They have deprived us of the documents. They were  
21           supposed to complete the production in late September. We are  
22           in February. It doesn't seem like we're going to get all the  
23           documents, if this goes through the end, until probably I  
24           would say at least late February, if -- if not beyond.

25           But that -- but that is kind of where it is in a best-case

1 scenario, that everything goes according to plan and, you  
2 know, our panel is in full swing, and they meet the numbers  
3 that they think that they can meet.

4 **THE COURT:** Mr. Even, if it's 17,000, then isn't that  
5 four-plus months?

6 **MR. EVEN:** I think it's going to be -- I -- well,  
7 they're hopeful that they'll get a little bit higher than  
8 that, and some documents they've already reviewed. They  
9 started around the 30th of September -- 30th of January --  
10 December. Forgive me. And so they are -- I want to say they  
11 are, I think, about 1500 in. If -- if they really are staying  
12 at the clip that they said then, yes, we are getting to late  
13 March or April for that.

14 The only option we can think of for that particular  
15 process, if the process remains, is to add others.

16 Alternatively, we can think of other sanctions. We -- we  
17 told Magistrate Judge Hixson from the get-go that we thought  
18 that the right -- the right approach here is that if somebody  
19 abuses the privilege, they don't get to use it anymore.

20 We tried this process now with the special masters. It  
21 seems to be causing a lot of delay and really rewarding Apple  
22 for what we see as clear bad behavior.

23 **THE COURT:** So what, if anything, are you asking for?

24 **MR. EVEN:** I think in an ideal situation, Your Honor,  
25 I think we will call it quits on this process and just say

1 that Apple needs to produce the documents. And they can then  
2 raise maybe something for a particular document if we intend  
3 to use something and they have particular strong assertion on  
4 that or it's just a waiver and they don't get to object to  
5 anything.

6 Other than that, we can try and add maybe one or two more  
7 special masters, although that creates other issues because  
8 there's a ramp-up period and hasn't been real easy finding  
9 people who can do this.

10 And so I don't know that there is a good solution short of  
11 a real sanction that will make it clear for Apple that this is  
12 not just a business decision of not complying but continuing  
13 to rake in the money without complying with the injunction.

14 **THE COURT:** Mr. Perry, are you going to respond?

15 **MR. PERRY:** Happy to respond, Your Honor.

16 So we started on this process with Epic's --

17 **THE COURT:** Mr. Perry, you're going to have to get  
18 closer to your mic.

19 **MR. PERRY:** I'm sorry, Your Honor.

20 We started this process, as the Court will recall, with  
21 Judge Hixson's recommendation that the parties employ a  
22 special master protocol, to which we agreed.

23 Apple has rereviewed all of the documents withheld or --  
24 or redacted as privilege, in light of the Court's orders. I  
25 think this -- this may have been missed in Mr. Even's

1 presentation.

2 In other words, the rereviewers were instructed to apply  
3 the Court's orders and guidance, including on these particular  
4 documents, and to take a very careful and appropriate  
5 approach. And -- and as a result, many of the documents have  
6 been downgraded either from "withheld" to "redacted" or from  
7 "redacted" to -- to "released" as the process was anticipated  
8 to work.

9 Judge Hixson requested that Apple complete that rereview  
10 by this Friday, January 17th, and we are on track to do that.

11 We finished more than 80 percent of the documents as of  
12 this morning, and we -- we have a -- barring other natural  
13 disasters, we will -- we will finish that by Friday.

14 The -- the documents remaining for review by the special  
15 masters, they have been going through document by document.  
16 They have so far sustained, as Mr. Evens -- Even indicated,  
17 more than 90 percent of the calls. And the ones that they  
18 have rejected, at least in the first set -- we just got the  
19 second set this morning so we haven't gone through them yet.

20 The first set were largely nonprivileged attachments to  
21 documents that they sustained the claim of privilege as to the  
22 master document or as to part of the document in the family,  
23 so it was a -- a partial rejection not -- not a wholesale  
24 rejection.

25 In our view, in other words, the process is working. We

1 are carefully applying the Court's orders and guidance,  
2 releasing to Epic those documents subject to them, asking the  
3 special masters to review them, and -- and they are by and  
4 large sustaining those claims.

5 That -- we did have a long conference with the special  
6 masters last night at Judge Segal's request on a number of  
7 procedural issues, substantive issues, and the process so far.  
8 The special masters acknowledged that the process is going a  
9 little slower than they anticipated.

10 Two of the special masters have actually been evacuated  
11 from their homes as a result of the LA fires. That has been  
12 a -- a significant drawback. They don't have their large  
13 monitors and other equipment. That's just reality.

14 They are still working. They're still getting through  
15 documents, but they do anticipate that they will pick up.

16 We have delivered to the special masters three sets of  
17 reviewed documents. Another set goes in today and then the  
18 final sets will go in early next week so that the documents  
19 essentially are in the special masters' hands.

20 You know, by this Friday, Epic will have -- or early or --  
21 or Monday, whenever the -- the production lags a little bit by  
22 the completion of review.

23 You know, the downgraded documents are being delivered to  
24 Epic periodically, so they have -- they have gotten them over  
25 the course of the rereview. The rest of them are going to the

1 special master, who, as I said, the first set of reports  
2 they've been largely upholding the claims. So I don't quite  
3 see the basis for any allegation of bad faith or -- or request  
4 for sanctions.

5 We have, of course, wish the process would move a little  
6 faster, too. But, of course, we didn't -- we didn't ask for  
7 the special master review. Epic did. We are volunteering --  
8 we are participating.

9 **THE COURT:** Look. I'm going to interrupt you at this  
10 point.

11 Having reviewed some of the claims, it was a stretch. So  
12 part of the issue is that you should not have been making the  
13 claims that you were making in the first place. That's the  
14 issue.

15 **MR. PERRY:** Your Honor, as I said, we -- I  
16 understood -- and we have taken the orders into account in the  
17 rereview and -- and downgraded accordingly. We understand  
18 that. We have applied those rulings in the rereview process.

19 **MR. EVEN:** Your Honor, if I may, that -- that's --  
20 that is, a, not the issue. The issue is not the rereview.  
21 The issue is that all of this should have been done prior to  
22 September 30th, the first time that Apple reviewed these  
23 documents. That's when they should have been careful and --  
24 and taken the appropriate approach, as Mr. Perry says.

25 That's when they should have applied the right standard,

1 which I don't think that the document -- that Judge Hixson's  
2 order or Your Honor's order changed in any material sense, nor  
3 is it true to say that that is the -- the difference maker.

4 As of yesterday, we got the numbers. There is what's  
5 called "category three," which is something that Apple from --  
6 says from the get-go they should never have withheld versus  
7 what is category two, which are documents that Apple says they  
8 are now acknowledging they should not have withheld only  
9 because of this Court's orders.

10 They had 17 and a half thousand documents that they admit  
11 they should never have withheld versus about five and a half  
12 thousand that are so-called because of this Court's orders.

13 So there's just a massive, massive number of documents  
14 that they've withheld intentionally, most of which they admit  
15 they never should have withheld, and some of which they're  
16 still insisting that this Court somehow created new law, even  
17 though it's, I think, pretty clear that it did not, that it's  
18 just applying good old Ninth Circuit law on privilege and what  
19 is and is not privileged. And we do think that that calls for  
20 sanctions.

21 Seventy percent error rate isn't -- suggests this is not  
22 an error. This is a system. This is what they set out to do.  
23 I -- we were -- we would have been in a very different  
24 situation, obviously, if the error rate they would have told  
25 us now is 10 percent. I would say, okay, that mistakes

1 happen. It's an art not a science sometimes in privilege  
2 cause.

3 Seventy percent according to their numbers before the  
4 special masters have looked at it, and I don't even know if we  
5 end up there. It -- it's just -- it's just an abuse of the  
6 process. And it's an abuse that is costing us months and  
7 months during which Apple is not complying and is not getting  
8 to its reckoning on its blatant noncompliance with yet another  
9 court order previous to that, namely, the injunction.

10 **THE COURT:** The 38,000, though, at this point you  
11 have?

12 **MR. EVEN:** No, we do not have that yet, Your Honor.  
13 We have out of that, I believe, 18,000 or -- thereabouts.

14 **THE COURT:** So why don't we have the 38,000 produced?

15 **MR. PERRY:** Your Honor, we make a production every  
16 Monday or now Tuesday, based on the previous week's review, so  
17 it's rolling review week by week.

18 I don't have the current numbers of what's been produced  
19 to Epic. But I could get those. And we can certainly talk to  
20 Mr. Even about that. He has every -- they -- Epic has  
21 everything through yesterday that has been reviewed and  
22 released, so -- and they will have --

23 (Simultaneous colloquy.)

24 **THE COURT:** You just told me that 38,000 were going  
25 to be produced.

1                   **MR. PERRY:** No. I'm sorry, Your Honor. I don't  
2 think I ever said 38,000.

3                   **THE COURT:** Well, Mr. Even, I think, said.

4                   **MR. PERRY:** Yes, Your Honor.

5                   **THE COURT:** So 17,000 are going to go to the special  
6 masters.

7                   **MR. PERRY:** Your Honor, would you like the numbers I  
8 have as of today?

9                   **THE COURT:** Well, that's why I'm here, isn't it?

10                  **MR. PERRY:** As of today, we have reviewed 43,493  
11 documents.

12                  **THE COURT:** And I really wish you would get a better  
13 microphone. I mean, it's just -- with all the technology that  
14 your firm has, I don't understand why it's hard to hear you.

15                  **MR. PERRY:** I'm sorry, Your Honor. I can log in from  
16 a different device. I haven't had that problem before.

17                  **THE COURT:** And I have hearing aids, so it can't be  
18 that.

19                  All right. Give me the number.

20                  **MR. PERRY:** We have reviewed 43,493 documents. We  
21 have downgraded 25,405. We have maintained privilege over  
22 17,998. There are 9,920 documents remaining to be reviewed.  
23 We expect to be done by Friday.

24                  **THE COURT:** 9,000 -- say it again?

25                  **MR. PERRY:** 9-9-2-0.

1                   **THE COURT:** Have the 25,405 downgraded been produced?

2                   **MR. PERRY:** Your Honor, many of them have. I don't  
3 know how many, because some will still go out this week.

4                   **MR. EVEN:** About 18, Your Honor.

5                   And -- and to be clear, how I got to my number is that  
6 because last night, Apple's counsel on a call with the special  
7 masters told them that his best estimate is that they're going  
8 to get 17,000 through end of the review. I'm not sure where  
9 they have 17998 already. That would mean that the special  
10 masters would have even more time with it, and that may bring  
11 down the -- Apple's own downgrading from 70 percent to  
12 68 percent or whatever it is. It's still an astounding  
13 number.

14                  But the point here is that Apple said 17,000, and Apple  
15 said it has 55,000 documents. I was taking their number  
16 rather than our 57,000.

17                  I'm not sure why it's hard for Apple to give us a  
18 definitive number of how many privileged documents they  
19 withheld, but that's the world we live in. I went with their  
20 numbers, 17 out of 55. That's the 69 percent. And that  
21 suggests that 38,000 are going to be downgraded. That's just  
22 the difference between 55 and 17.

23                  **THE COURT:** Mr. Perry, who is the partner in charge  
24 of the actual numbers?

25                  **MR. PERRY:** It's myself, Mr. Wesneski of my law firm,

1 and Ms. Conforato [phonetic], one of our colleagues, working  
2 with the numbers. And as I said, Mr. Even is exactly right.  
3 We gave best estimates last night.

4 The numbers I just gave the Court are actuals as of this  
5 morning. I mean, in other words, I -- I asked for the  
6 specific documents from the document platform. This is what  
7 we have completed as of this morning.

8 Each -- each batch, Your Honor, has been a little bit  
9 different -- in other words, it has not run straight line  
10 percentages from week to week that -- which is why we don't  
11 know the exact numbers of the breakdown, other than what's  
12 already done.

13 **THE COURT:** The 25,405 will be produced by today.

14 **MR. PERRY:** Yes, Your Honor.

15 **THE COURT:** How many is your team reviewing on a  
16 daily basis? How are you going to get to the 9920 by Friday?

17 **MR. PERRY:** Your Honor, we've been averaging the last  
18 week more than 15,000 a week, which is 2,000 in a lot a day.  
19 And the check-in today was that we will get there by Friday.

20 I mean, the instruction -- the request by Judge Hixson was  
21 to finish by Friday; therefore, the instructions to the team  
22 are finish by Friday. We -- we will hit that. We have every  
23 intention of hitting that barring some unforeseen  
24 circumstance.

25 **THE COURT:** Between now and Friday, you will make

1 daily productions.

2                   **MR. PERRY:** I'm not sure we can, Your Honor, because  
3 the -- the review platform -- the reviewers have to review the  
4 documents, put them back in the platform. They then have to  
5 be stamped, redactions burned in, a bunch of thing -- it takes  
6 us two or three days to make -- to get from the finish of the  
7 review to the production because of the limitations of the  
8 review platform.

9                   And so -- so there's -- there's a lag, in other words,  
10 between review and -- and the productions. That's why we've  
11 been closing things out on Thursdays and producing them on  
12 Monday or now Tuesday so that over the weekend that work can  
13 be done.

14                   I don't quite understand all the mechanics, but it's quite  
15 complicated, apparently, to get from the reviewers into the  
16 production status.

17                   **THE COURT:** If they're doing it on a daily basis,  
18 then why can't you produce on a daily basis?

19                   **MR. PERRY:** Well, we finish the review, and then  
20 there's a two-to-three-day lag between the completion of the  
21 review and the production of those documents that were  
22 reviewed. That's what I'm saying -- so we can do it daily,  
23 but we can't do it, you know, tomorrow -- we can't do today's  
24 documents tomorrow, is my understanding.

25                   **THE COURT:** So the documents you're producing

1 tomorrow is --

2 He's gone.

3 Mr. Lo, do you understand the process?

4 **MR. LO:** Yes. My general understanding is that the  
5 documents we are producing tomorrow, the review was finished  
6 last week. And then once that review is finished, then it  
7 takes a couple of days to do the stamping and to do all of the  
8 processing, so that's why we had done the Tuesday production  
9 for the prior.

10 **THE COURT:** How can it -- they're already stamped.  
11 They had to be already stamped because you had to identify  
12 them.

13 **MR. LO:** They are -- they are not stamped because  
14 they are identified -- in the system, they are not already  
15 stamped, Your Honor.

16 So when they are going out, these are going out  
17 sequentially based on -- whatever Mr. Even receives today,  
18 tomorrow's number will follow what -- what today's stamping  
19 number is, so they're not prestamped.

20 **THE COURT:** How could you put them on a log --

21 **MR. LO:** We put them --

22 **THE COURT:** -- haven't identified them?

23 **MR. LO:** They have an internal identifier number, so  
24 there is a -- there is a identifier number associated with  
25 each document. But the documents themselves are not stamped.

**THE CLERK:** Excuse me, Counsel. Please ensure that your microphones --

**THE COURT:** Is someone else in the room with you, Mr. Lo? You're -- you were --

MR. LO: No.

**THE COURT:** We were hearing feedback.

**MR. PERRY:** Your Honor, I switched devices. I've closed out the other device. I apologize for the microphone issue. I hope that is more clear.

**THE COURT:** It is. Thank you.

**MR. PERRY:** Your Honor, to answer your question, the -- the documents that were withheld as privileged are on the log by log number. They're not stamped with Bates numbers, so they have to be reprocessed as production documents rather than as privileged documents. And then the redactions, if there are redactions, also have to be burned in, is another part of this. So there's steps in the process of preparing the documents for production.

**THE COURT:** How many people do you have doing that, Mr. Perry?

**MR. PERRY:** Your Honor, a vendor does most of that. I don't know how many people are -- I mean, I don't know how many they have doing it, but a lot. I mean -- I mean --

**THE COURT:** "A lot" doesn't tell me anything.

**MR. PERRY:** Well, Your --

1 Okay. Yes, Your Honor.

2 We -- we have enough that -- the protocol says we finish  
3 on a Tues- -- on Thursday, and we produce them on the Monday.  
4 So we have the -- we have the back end, the vendor side set  
5 out to do that level of work for each week's production.

6 As I said, this week should be the last set of reviews, so  
7 the final production would go out early next week with the  
8 over-the-weekend, you know, stamping and all that. And then  
9 we would be done with the production side of things.

10 And then under the current plan, you know, as I said, we  
11 finish on Friday and the final production is made early next  
12 week.

13 **THE COURT:** Mr. Even, given what you've seen so far,  
14 how many days do you think it's going to take to get through  
15 another evidence -- or to finish this evidentiary hearing?

16 **MR. EVEN:** So just -- just in terms of actual hearing  
17 days?

18 **THE COURT:** Right. How many days?

19 **MR. EVEN:** I think in -- probably in two days, we can  
20 finish it. Maybe three. I'll -- I'll defer to Mr. Bornstein,  
21 if he has a different view. But I think that's the ballpark.

22 **MR. BORNSTEIN:** I think that's the right ballpark,  
23 Your Honor. I was going to say three with the hope that we  
24 can all be efficient and use fewer than that. But I would  
25 hate to find ourselves setting aside only two and then have

1 Your Honor conclude that there was more that Your Honor needed  
2 to hear.

3 **THE COURT:** Do we know who the witnesses will be?

4 **MR. BORNSTEIN:** We -- we certainly know some of them.  
5 Names that will be familiar to Your Honor, who Your Honor has  
6 seen, who we will want to have come back.

7 I don't think I can say we have a complete list at this  
8 point given the pending document production.

9 **MR. EVEN:** I think we can say, Your Honor, that --  
10 that Mr. Schiller and Mr. Oliver are going to be -- going to  
11 have to come back for sure. Whether we need more than that or  
12 not, I don't think we're there yet.

13 **MR. BORNSTEIN:** Yeah. And if it turns out, Your  
14 Honor, that Mr. Schiller and Mr. Oliver are the full universe,  
15 we certainly wouldn't contemplate three days, to be clear.

16 But we have identified other individuals who were clearly  
17 involved in a material way in this process way through the  
18 documents we've received.

19 We are discussing among ourselves, and we will, of course,  
20 talk to Apple about that in due course.

21 **THE COURT:** When is Schiller in trial in Germany, I  
22 think you said, or somewhere in Europe?

23 **MR. PERRY:** He's in the UK, Your Honor. The trial  
24 started this month. I believe he is unavailable the -- the --  
25 essentially the remainder of January for that trial.

I believe -- I believe the -- or the fact evidence portion is scheduled to end by the end of January in -- in the UK proceeding.

**THE COURT:** Mr. Even, how much time are you going to want between getting the documents and being ready for the hearing?

**MR. EVEN:** I think we can probably be ready in a couple of weeks, Your Honor. We will be very efficient. And, obviously, we already have some of the documents, so I -- I'm not going to say it's two weeks from the very last document, but from the point in time that we have the bulk, then two weeks.

If there is some trickle that comes in after, I don't think that is going to reset the time.

(Pause in the proceedings.)

**THE COURT:** Well, then I anticipate based upon what I've heard that you'll have all the documents no later than Tuesday. Schiller's not even available this month. Two weeks from Tuesday takes us to February 4th. I will think about instituting a protocol that may deal with any documents that have not been reviewed by the special master.

**MR. BORNSTEIN:** Yes, your Honor. I was -- I was going to ask the question with that time frame. We don't have the documents Tuesday, but -- the ones that Apple is maintaining the privilege calls over --

**THE COURT:** Right.

**MR. BORNSTEIN:** -- and which will be going to the special master. Okay.

I wanted to make sure that hadn't -- that part of the process hadn't gotten lost.

**THE COURT:** I actually have back-to-back trials, which is why I'm hesitating.

(Pause in the proceedings.)

**THE COURT:** All right. Let me -- as you all know, many civil cases resolve and they don't go to trial. And if the ones that I have set don't go in February, then I'm going to have a lot of flexibility to get you in in February.

I just -- when I lose flexibility is -- is mid-March 'cause that's a criminal case, and that will go to trial.

So --

**MR. BORNSTEIN:** Would it make sense, Your Honor,  
then --

**THE COURT:** I think this is what I'm going to do --  
Mr. Bornstein, just hold on.

MR. BORNSTEIN: Sure

**THE COURT:** I expect the production to be completely done by Tuesday. It would be helpful to know by the end of the month -- and I'll give you -- I'll just write out an order with some dates where the special masters are by the end of the month.

1           What I might do is anything that they have not reviewed --  
2           I might require all of that to be delivered to me to do my own  
3           spot check so that I can determine whether I think it's a  
4           10 percent rate or something more than that.

5           Clearly, as you saw, I was not -- most of what Apple was  
6           trying to keep under the privilege, I rejected. So that being  
7           said, given that the -- that the special masters' review at  
8           this point is pretty consistent with what it is we have in  
9           terms -- or seems to be consistent with Apple's review, even  
10           belatedly, I'm not sure I'm willing to just turn them over,  
11           Mr. Even. It's a 10 percent reduction rate.

12           On the other hand, my backstop is I'll take them myself,  
13           and if I find much more than that, then perhaps I will have  
14           them disclosed to the lawyers attorneys' eyes only or some  
15           kind of protocol so that I can get them into your hands if  
16           we're doing this in February.

17           Do you see what I'm saying?

18           **MR. EVEN:** I understand, Your Honor. And I  
19           appreciate that.

20           **THE COURT:** And clearly Apple's delay -- and I do  
21           think in part, Mr. Perry -- in large part, this is delay.  
22           Given what I've seen, it was totally a tactic. And I will  
23           consider that in terms of this hearing and in terms of my  
24           findings.

25           So there will be consequences for the choices that your

1 client made, assuming I find you in contempt.

2 I should know by the end of the month. You all just need  
3 to save February. You're working on this case anyway.

4 If my -- if my trial goes away -- I've got two. If they  
5 go away, my expectation is that I'll set the hearing in  
6 February, even -- even under the current -- the next trial I'm  
7 doing -- it's a three-phase trial, so if the plaintiff does  
8 not win in phase one, then the end of February opens up, so  
9 most likely the later in February, the most likely -- more  
10 likely it is.

11 My next trial doesn't start until March 3rd, so I would  
12 save the last week of February.

13 **MR. EVEN:** Understood.

14 **THE COURT:** Okay? So we'll tentatively set -- as I  
15 think -- I'm thinking out loud, we'll tentatively set the  
16 evidentiary hearing to start February 24th.

17 Questions?

18 **MR. PERRY:** Your Honor you mentioned a -- a -- Mark  
19 Perry for Apple.

20 You mentioned a report on the special masters' progress by  
21 the end of the month. Do you have a --

22 **THE COURT:** I want numbers.

23 **MR. PERRY:** I understand. The 31st or the 30th?  
24 I'm -- we will -- we will provide whatever the Court requests,  
25 of course.

**THE COURT:** How about noon on the 31st? And they don't have to do it. You can get the information, and you can provide it to me.

**MR. PERRY:** We will do that, Your Honor.

**THE COURT:** -- to increase their -- don't mean to increase their load. I just need to know where we are.

All right? Other questions?

**MR. EVEN:** None for Epic, Your Honor.

**MR. BORNSTEIN:** (Shakes head.)

**MR. PERRY:** Not for Apple, Your Honor.

**THE COURT:** All right. We'll be in touch. Thank you very much.

We're adjourned.

**MR. BORNSTEIN:** Thank you, Your Honor.

**MR. EVEN:** Thank you, Your Honor.

**THE CLERK:** Court is adjourned.

(Proceedings were concluded at 11:37 A.M.)

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**CERTIFICATE OF REPORTER**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

Rayne A. Mereado

Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

Tuesday, January 14, 2025

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